



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**
Prince Edward Island
Île-du-Prince-Édouard
CANADA

Docket LP09-103
Order LP10-001

IN THE MATTER of an
alleged contravention of Section 2 of the Prince
Edward Island Lands Protection Act

**BEFORE THE
COMMISSION**

on Thursday, the 14th day of January, 2010.

Allan Rankin, Vice Chair
David Holmes, Commissioner
Chester MacNeill, Commissioner

Order

IN THE MATTER of an
alleged violation of Section 2 of the Prince Edward
Island Lands Protection Act

Order

WHEREAS, pursuant to sub-section 2(a) of the **Act**,
*no person shall have an aggregate land holding in excess of 1000
acres;*

AND WHEREAS, on December 18, 2007,
Callaghan Farms (the "Respondent") received Executive Council
approval to acquire 852.06 acres of land from Harris Callaghan,
Audrey Callaghan in Trust and/or Harris and Winston Callaghan
(applications C4425, C4426 and C4427);

AND WHEREAS, on November 5, 2008, the
applicant corporation's legal counsel filed three applications with
the Commission to acquire provincial parcels 048462, 048470,
038869, 048256, 1026038 and 048223 (applications C4633,
C4634 and C4635). The applications reported under question 23
that the applicant corporation owns or leases a total of 852.06
acres;

AND WHEREAS, the Commission made its
recommendation to Executive Council and Executive Council
subsequently approved the above noted applications, based on the
information certified by the applicant corporation's legal counsel;

AND WHEREAS, Executive Council approved the
acquisitions on December 2, 2008 (Executive Council order no's
EC2008-750, EC2008-751 and EC2008-752);

AND WHEREAS, the 852.06 acres reported to be
owned by the applicant corporation were in fact, upon submission
of applications C4633, C4634 and C4635, in the names of Harris
Callaghan, Audrey Callaghan in Trust and/or Harris and Winston
Callaghan and were not owned by the applicant corporation. It also
appears that as of October 16, 2009, almost one year later, title was
still in the name of said individuals. As a consequence, Harris
Callaghan, shareholder of the applicant corporation had an
aggregate land holding in excess of the 1000 acre limit specified in
Section 2(a) of the **Act**.

AND WHEREAS, had the correct information been filed, the Commission would have been aware that the approval of the above noted applications would result in one of the shareholders being in excess of his aggregate land holding limit pursuant to Section 2 of the Lands Protection Act and would not have processed the applications;

AND WHEREAS, based on review of the above information, it appears that the applicant corporation contravened sub-section 2(a) of the Act as a result of acquiring the land specified in Executive Council orders EC2008-750, EC2008-751 and EC2008-752, thereby causing one of its shareholders to have an aggregate land holding in excess of 1000 acres.

AND WHEREAS, by Notice of Intention dated October 23, 2009; the Respondent, through its legal counsel was notified of the above stated alleged contravention of the Act:

AND WHEREAS, pursuant to the said Notice, the Respondent was given the opportunity to provide a written response to the alleged contravention on or before November 13, 2009;

AND WHEREAS, the Respondent filed a written response dated November 10, 2009 with the Commission;

AND WHEREAS, the Commission has fully considered the issues before it and has found and concluded that the said contravention did occur;

AND WHEREAS, the Commission has determined that the seriousness of this contravention was exacerbated by the filing of erroneous information with the Island Regulatory and Appeals Commission on November 5, 2008 when the following certification was made under signature of legal counsel for the applicant corporation: "I hereby certify that the information and the attached legal description of the property is true in all respects";

THE COMMISSION HEREBY IMPOSES a penalty in the amount of \$1,000.00, pursuant to subsection 15.1(1) of the Act;

THE COMMISSION HEREBY FIXES February 5, 2010 as the date by which the Respondent must pay the \$1,000.00 penalty;

DATED at Charlottetown, Prince Edward Island, this 14th day of January, 2010.

BY THE COMMISSION:

Allan Rankin, Vice Chair

David Holmes, Commissioner

Chester MacNeill, Commissioner

TAKE NOTICE that any person or corporation that has contravened section 2, 4, 5, 5.3, 6.1 or 6.2 is liable to a penalty, pursuant to Subsection 15.1(1) of the Act, of not more than \$10,000;

Pursuant to Subsection 15.1(3): If any person or corporation fails to pay any penalty imposed by the Commission within the time fixed by the Commission for the payment of the penalty, the Commission may make application, without notice to the person or corporation, to a judge of the Supreme Court for an order that judgment for the amount of the penalty or any unpaid portion of the penalty may be entered in the court against the person or corporation.

AND FURTHER TAKE NOTICE that Section 12 of the *Island Regulatory and Appeals Commission Act* reads as follows:

12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it or rehear any application before deciding it.

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written Request for Review, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13.(1) and 13(2) of the **Act** provide as follows:

13.(1) An appeal lies from a decision or order of the Commission to the Appeal Division of the Supreme Court upon a question of law or jurisdiction.

(2) The appeal shall be made by filing a notice of appeal in the Supreme Court within twenty days after the decision or order appealed from and the Civil Procedure Rules respecting appeals apply with the necessary changes.